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The Honorable Robert H. Whaley

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAR 17 1999

JAMES R. LARSEN, CLERK

DEPUTY

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON

11 ROBERT E. WHITE, et al.,

12 Plaintiffs,

13 v.

14 DR. C. ALVIN PAULSEN, et al.,

15 Defendants.

16
17 DON BYERS, et al.,

18 Plaintiffs,

19 v.

20 C. ALVIN PAULSEN, M.D., et al.,

21 Defendants.

No. CS 97-0239 RHW

PLAINTIFFS' MOTION TO CERTIFY
DEFENDANTS' APPEAL AS FRIVOLOUS

Noted for Telephonic Oral Argument on
April 21, 1999, at 10:30 a.m.

22
23 Plaintiffs move that, pursuant to Chuman v. Wright, 960 F.2d 104 (9th Cir. 1992), this Court
24 certify the defendants' appeal of the Court's denial of defendants' motion for summary judgment
25 regarding the qualified immunity defense as frivolous. Defendants may only appeal questions of law,
26 not fact, and the legal issues underlying defendants' claim of qualified immunity have been clearly

PLAINTIFF'S MOTION TO CERTIFY DEFENDANT'S
APPEAL AS FRIVOLOUS - 1

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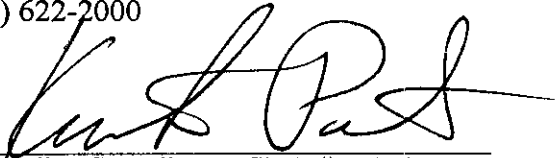
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1 settled by controlling authority. Further, the factual issues relevant to the qualified immunity defense
2 are not proper issues for interlocutory appeal, and thus constitute a frivolous appeal. This motion is
3 based upon the accompanying Memorandum in Support of Plaintiffs' Motion to Certify Defendants'
4 Qualified Immunity Appeal as Frivolous and on the Affidavit of Keith D. Petrak.

5 DATED this 16th day of March, 1999.

6
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 16, 1999, a copy of the foregoing pleading was served upon the following individuals:

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